



March 30, 2000

Ms. Judy Doran
Open Records Coordinator
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2000-1237

Dear Ms. Doran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133487.

The Texas Parks and Wildlife Department (the "department") received a request for documents relating to the Texas State Railroad's budget, purchases of locomotives, inventory, and transport expenses. The requestor also seeks the job posting bulletins for two jobs with the Texas State Railroad. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a), amended by the Seventy-sixth Legislature, reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.-Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from a potential opposing party. Open Records Decision No. 555 (1990), *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You have submitted a letter from the requestor, the potential opposing party, claiming that the department discriminated against him in its hiring and promotion practices. The requestor further states that, upon the advice of his attorney, he is informing the department of his intent to pursue the matter in court unless his settlement demands are met. In subsequent letters, the requestor sets forth his settlement proposals and a deadline for the department's acceptance. According to the requestor, the department can expect to be served with process within the next fifteen days if the settlement is rejected. Based on the totality of the circumstances presented here, we conclude that litigation is reasonably anticipated for purposes of section 552.103.

However, we conclude that the department has failed to demonstrate that the information in Attachments E, F, and G relates to the anticipated discrimination claim. *See* Open Records Decision No. 638 at 4 (1996) (governmental body must explain how requested information relates to pending or reasonably anticipated litigation). We also note that some of the documents in these attachments are expressly made public by section 552.022. *See* Gov't Code § 552.022(a)(3) (information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is public unless that information is expressly made confidential under other law), Gov't Code § 552.022(a)(1) (a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108, is public information). Finally, some of the documents in Attachment E appear to have been filed with the county clerk and are therefore public. *See* Local Gov't Code § 191.006 (county clerk's records are public); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Based on the foregoing, we conclude that the information in Attachments E, F, and G may not be withheld under section 552.103.

Although the job posting information in Attachment H relates to the anticipated litigation, the information has been previously released to the public and may not be withheld under section 552.103. *See* Gov't Code § 552.022(a)(15) (information regarded as open to the public under an agency's policies is public information), *see generally* Gov't Code §§ 552.007, .223. Accordingly, you must release the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

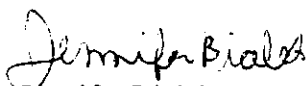
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ljp

Ref: ID# 133487

Encl. Submitted documents

cc: Mr. Jack Beazley
807 E. Park
Palestine, Texas 75801
(w/o enclosures)